

**DEBRA K. YANDELL**  
Claimant

**STATE OF KANSAS,  
TOPEKA STATE HOSPITAL**

AND

## STATE SELF-INSURANCE FUND

Docket No. 213,170

## ISSUES

1. Did claimant suffer accidental injury arising out of and in the course of her employment on the date alleged?
2. Did the Administrative Law Judge arbitrarily disregard unbiased witness testimony?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Administrative Law Judge entered an Award in this matter on August 14, 1997. At that time, the Administrative Law Judge did not have available the depositions of Iris Simons taken July 14, 1997, Cynthia Appelhanz taken July 15, 1997, and Debra Conkle, R.N., taken March 20, 1997. The parties stipulated that this Award was based upon an inappropriate record and the Administrative Law Judge entered a second Award on October 16, 1997, which is the basis for this appeal. All parties stipulated the second Award entered in October was appropriate and was entered without objection. The Appeals Board, although considering this an unusual procedure, accepts the stipulations of the parties with regard to the October 16, 1997, Award.

Claimant alleges she suffered accidental injury on February 19, 1996, when she was helping restrain a patient. The testimony of the witnesses regarding this incident is conflicting in that respondent's witnesses deny that claimant was ever physically in contact with the patient and further deny that claimant suffered accidental injury as alleged. Respondent argued that there was only a single incident involving this patient and claimant had no physical contact with this patient.

However, a review of the records attached to the deposition of Iris Simons contradicts respondent's version of these events. The exhibit attached to the Simons deposition includes multiple entries for February 19, 1996. An entry at 0810 military time, or 8:10 a.m., shows the patient was placed in a Geri chair and restrained. The entry indicates that the patient could be released when calm. This note shows that Dr. Carter and D. Conkle, R.N., were involved, and D. Conkle actually signed the note. D. Conkle would indicate Debra Conkle, respondent's witness, was involved in this situation.

A later entry on February 19, 1996, lists 1505 military time as the entry time, indicating 3:05 p.m. Again, the patient was placed in the Geri chair for her own protection with the indication that she may be released when calm. This entry was signed by Dr. Garcia and R. Sample. However, there is no signature by D. Conkle on this entry which would indicate, along with her description of only one incident, that Debra Conkle was not involved in this second incident.

It is clear from the records that more than one incident occurred on February 19, 1996, with the same patient being placed in a Geri chair on both occasions for her own protection. This helps explain the contradictory descriptions provided by the various witnesses to these incidents.

Respondent alleges that claimant suffered from preexisting back problems associated with a 1974 motorcycle accident, an August 1994 accident at home when she tripped over a guide wire, and a February 16, 1996, accident at home when she fell down a flight of stairs. However, claimant was physically capable of returning to work and performing her job duties after these incidents. While she may have had some preexisting physical injuries associated with these prior incidents, this does not defeat the fact that claimant's testimony, along with the medical testimony of the doctors, establishes that the February 19, 1996, incident was an aggravation of claimant's preexisting conditions and constitutes a separate accidental injury. It is also significant that after the February 16, 1996, fall, claimant did not seek medical treatment, did not miss work and denied having any significant injury. The Appeals Board finds the evidence sufficient to show claimant suffered an aggravation on February 19, 1996, which would entitle her to benefits under the Workers' Compensation Act.

The Appeals Board therefore finds, based upon a review of the evidence, that claimant is entitled to an award based upon the stipulated functional impairment of 7 percent to the body as a whole.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bryce D. Benedict dated October 16, 1997, should be, and is hereby, affirmed.

Claimant is entitled to 5 weeks of temporary total disability compensation at the rate of \$166.11 per week based upon the stipulated average weekly wage of \$249.16 in the amount of \$830.55, followed by 29.05 weeks of permanent partial disability compensation at the rate of \$166.11 per week totaling \$4,825.50 for a 7 percent permanent partial general body disability, making a total award of \$5,656.05.

As of June 2, 1998, the entire award would be due and owing in one lump sum minus any amounts previously paid.

In all those regards, the Award of the Administrative Law Judge is affirmed insofar as it is not contradicted herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

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c: James B. Biggs, Topeka, KS  
Scott M. Gates, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director